(1) Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

October Term, 1996

HOWARD C. MEDLEY,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Petition For Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

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ISSUE PRESENTED

I. Should a court apply the standard for civil disability adopted by the United States Court of Appeals for the Fourth and Ninth Circuits, or the standard for civil disability adhered to by the United States Court of Appeals for the Seventh Circuit in deciding whether the adverse collateral consequences suffered by a petitioner seeking a Writ of Error *Coram Nobis* are a sufficient civil disability to warrant *coram nobis* relief?

LIST OF PARTIES

Howard Medley (hereinafter "Petitioner") was the Plaintiff in the United States District Court for the Northern District of Illinois, Eastern Division and the Appellant before the United States Court of Appeals for the Seventh Circuit. Petitioner is the founder and majority stockholder of Medley's Moving & Storage Co., Inc. (hereinafter "Corporation"), organized and doing business under the laws of the State of Illinois. Medley's Moving & Storage Co., Inc., has no parent or subsidiary corporations.

The United States of America was the Defendant in the United States District Court for the Northern District of Illinois, Eastern Division, and the Appellee before the United States Court of Appeals for the Seventh Circuit.

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Review is sought of the, as yet unpublished, opinions of the Seventh Circuit Court of Appeals, dated October 22, 1996 and February 18, 1997, appearing in the Appendix. The opinion and order of the District Court, dated December 14, 1995, appears at page App. 3, *et seq.*

JURISDICTION

Petitioner seeks review of the judgment issued by the Seventh Circuit Court of Appeals on October 22, 1996 and affirmed by its order of February 18, 1997. The Supreme Court has jurisdiction to review this opinion pursuant to 28 U.S.C. § 1254(1).

STATUTE INVOLVED

The statute involved in this appeal is 28 U.S.C. § 1651.

STATEMENT OF THE CASE

In 1989, Petitioner was convicted of violating 18 U.S.C. § 666. The Petitioner was sentenced to a term of 30 months in prison and fined $10,000.00. Petitioner appealed to the United States Court of Appeals for the Seventh Circuit and the conviction was affirmed. *United States of America v. Medley*, 913 F.2d 1248 (7th Cir. 1990).

Petitioner was paroled on December 5, 1990. Petitioner, on February 13, 1992, filed a petition for writ of habeas corpus, pursuant to 28 U.S.C. § 2255, with the United States District Court, Northern District of Illinois, Eastern Division. The Petition for Writ of *Habeas Corpus* alleged ineffective assistance of trial counsel. The petition was denied, and subsequently affirmed by the United States Court of Appeals for the Seventh Circuit in an unpublished opinion. *United States of America v. Medley*, 1 F.3d 1244 (7th Cir. 1992), *cert. denied*, ___ U.S. ___, 114 S.Ct. 604 (1993).

On August 10, 1995, Petitioner filed a Petition for Writ of Error *Coram Nobis* in the United States District Court for the Northern District of Illinois, Eastern Division. Petitioner alleges that his conviction was wrongly entered, based upon the government's use of perjured testimony. On October 4, 1995, Petitioner filed an amended Petition for Writ of Error *Coram Nobis*, alleging civil disability[1] justifying relief. In his amended Petition, Petitioner argued that the court should adopt the view of the United States Court of Appeals for the Fourth and Ninth Circuits that adverse collateral consequences which flow from a felony conviction are a sufficient civil disability to warrant *coram nobis* relief. The United States District Court for the Northern District of Illinois, Eastern Division, denied the amended petition, in a Memorandum Opinion and Order dated December 14, 1995.

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[1] Petitioner, in his amended Petition for Writ of Error *Coram Nobis*, alleged that decertification as a "Minority Business Enterprise" by the City of Chicago constituted a civil disability justifying relief.

Petitioner then sought review in a timely fashion, by the United States Court of Appeals for the Seventh Circuit. The United States Court of Appeals for the Seventh Circuit dismissed the appeal as moot in an unpublished opinion dated October 22, 1996. Petitioner then filed a Petition for Rehearing En Banc. The petition was denied February 18, 1997. This Petition for *Writ of Certiorari* follows.

STATEMENT OF FACTS

Petitioner was a member of the Chicago Transit Authority ("CTA") Board of Directors. Petitioner was indicted in April, 1988, pursuant to 18 U.S.C. § 666. The indictment arose out of Petitioner's receipt of $25,000.00 in connection with a real estate transaction in which Brian Flisk, owner and chairman of Metropolitan Petroleum Company ("MPC"), and Howard Weitzman entered into a master lease agreement and option to purchase agreement on warehouse and property located at 4800 S. Central Ave., Chicago, Illinois ("4800 Property") with the G&K and CGV partnerships.[2]

In October, 1986, MPC entered into two contracts with the CTA to be its exclusive supplier of diesel fuel. Shortly thereafter, in late November, the CTA's Internal Audit Division became suspicious of MPC's billing procedures and whether it was meeting its MBE Program requirements and subsequently began investigating their

[2] Michael Zavis and Robert Sperling, attorneys with the then law firm of Katten & Muchin, were undisclosed limited partners in the G&K and CGV partnerships.

suspicions. Brian Flisk became aware of the investigation and sometime between late January and the end of February, 1987, met with Petitioner at his CTA office to discuss the CTA's MBE Program requirements.

Prior to February 17, 1987, Petitioner learned from Robert Sperling (hereinafter "Sperling"), an attorney with Katten & Muchin, that Sperling and his business associate, including Michael Zavis (hereinafter "Zavis"), another attorney at Katten & Muchin, were seeking a buyer for the 4800 Property. Robert Sperling informed Petitioner that the warehouse was in dire financial straits and anyone who found a suitable tenant or purchaser would receive a commission on the transaction.

The CTA's Internal Audit Division, on February 20, 1987, published the results of its initial investigation of MPC to CTA Board members. The report criticized MPC's billing procedures and questioned the validity of MPC's MBE Program status. On March 17, 1987, the Internal Audit Division issued a second critical report, dealing with the quality of diesel fuel provided by MPC. Subsequent to the issuance of the second report, Petitioner met once again with Brian Flisk and Howard Weitzman, to discuss MPC's troubles with the CTA. Petitioner, sometime thereafter, contacted Robert Sperling and told him he knew of an individual interested in the 4800 Property. On March 19, 1987, Brian Flisk and Howard Weitzman inspected the 4800 Property. The next day the parties began to negotiate for either the purchase or lease of the warehouse.

Aside from the two meetings with Brian Flisk and Howard Weitzman, Petitioner's only other action on

MPC's behalf occurred on March 19, 1987, when Petitioner personally witnessed the delivery of MPC fuel to a CTA terminal and a subsequent phone call to Natalie Delgado, chair of the CTA's Purchases & Sales Committee, at her office.[3]

The first time the negotiations on the 4800 Property resulted in any commission for Petitioner was April 13, 1987, long after Petitioner had performed any investigation or taken action with respect to the MPC contact with the CTA. Finally, during the negotiations, Petitioner's communication regarding the acceptance of a finder's fee was limited to Zavis, Sperling and his accountant John Wilson.

At Petitioner's first trial, Zavis was called by the defense. Zavis, as characterized by the court, was a "difficult" witness; his testimony was peppered with "I don't remember" and "I cannot recollect". For instance, when Zavis was initially questioned as to whether he stated he owed Petitioner a finder's fee, he flatly denied making the statement. Zavis was also unable to recall the purchase price of the property, that the brokerage commission was originally to be paid to Richard Kahan, that the commission was later to be paid to Monroe Realty, and who would pay Petitioner in connection with the real estate transaction. Furthermore, Zavis contradicted his initial "302" statements by denying that he told Petitioner

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[3] During this telephone conversation, Petitioner informed Natalie Delgado that the MPC fuel quality samples were inaccurate because they were being taken from water soaked fuel tanks, not MPC fuel trucks, which Medley visually witnessed during his oversight of the fuel delivery.

that if there was a sale, he [Petitioner] would get something in the form of a commission which Zavis and his associates [members of G&K] would split with Petitioner. This first trial resulted in a hung jury, thereby acquitting Petitioner of the bribery charges.

Subsequently, a superseding indictment was returned against Petitioner for violation of 18 U.S.C. § 666. On the witness stand at the second trial, Zavis, who had suddenly developed tremendous memory recall, proved to be an extremely beneficial witness for the prosecution. Not only did Zavis recall telling Petitioner that a commission or finder's fee was owed to Petitioner, but Zavis further remembered telling Petitioner that he [Zavis] would negotiate with the purchasers so the finder's fee would be paid by the buyer. Finally, Zavis also recalled that he did undertake and consummate such commission negotiations with Brian Flisk and Howard Weitzman, prior to March 31, 1987.

Not to be forgotten, Sperling also testified at Petitioner's second trial. Sperling testified that sometime between March 31, 1987, and April 14,[4] 1987, he had a

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[4] According to Petitioner's receipts from the *M&M Club*, where Sperling testified the meeting occurred, April 10, 1987, was the only date between April 1, 1987, and April 14, 1987, when Petitioner was at the club.

However, according to the contracts drafted in connection with the negotiations on the 4800 Property, it was not Brian Flisk's and Howard Weitzman's obligation to pay the commission.

As a matter of fact, it was not Flisk's and Weitzman's obligation to pay the commission until an amendment, in the form of a letter, was sent bearing a date of April 13, 1987. Finally,

conversation with Petitioner. Sperling testified that he informed Petitioner that the Purchasers of the 4800 Property (Brian Flisk and Howard Weitzman) would pay the commission 50% down and the balance over six (6) monthly payments. Sperling also testified that his partnership was accepting the initial downpayment on the commission.

The government also called John Wilson as a witness in both trials. At the second trial, Wilson testified that on April 14, 1987, he had a conversation with Petitioner by which he was told "a guy named Weitzman was going to come by and bring a check. . . . " However, during the first trial, pursuant to questioning by the government, Wilson testified he did not know what Petitioner told him during the conversation in advance of Weitzman's delivery of a $25,000.00 check. Wilson further stated that on one occasion, he told the government, "Type out what you want me to say and I will sign it, anything to get you off my back".[5]

Based upon the testimony of Zavis, Sperling, and Wilson, Petitioner was convicted. The conviction had to rest upon the testimony of the three prosecution witnesses because that was the only evidence, no matter how suspect or inferential, to support the connection between Petitioner's effort on behalf of MPC and his subsequent

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neither Flisk nor Weitzman was aware of their commitment to pay the commission on the 4800 Property until April 13, 1987, three (3) days after Sperling's supposed meeting with Petitioner.

[5] Wilson also testified that at the first trial "the government scared the hell out of me . . . [the government] really knows how to play hardball".

receipt of the $25,000.00 finder's fee on the 4800 Property. Petitioner was subsequently sentenced to 30 months in jail and a fine of $10,000.00. The conviction was affirmed by the United States Court of Appeals for the Seventh Circuit in *United States of America v. Medley*, 913 F.2d 1248 (7th Cir. 1990).

Petitioner was paroled on December 5, 1990. Petitioner, on February 12, 1992, filed a Petition for Writ of *Habeas Corpus* pursuant to 28 U.S.C. § 2255, alleging multiple examples of ineffective assistance of counsel. The petition was denied by the United States District Court for the Northern District of Illinois, Eastern Division, and subsequently affirmed by the United States Court of Appeals for the Seventh Circuit in an unpublished opinion, *United States of America v. Medley*, 1 F.3d 1244 (7th Cir. 1992), *cert. denied*, 114 S.Ct. 604 (1993). Petitioner's post-incarceration probationary period ended on September 20, 1992.

On August 10, 1995, Petitioner filed a Petition for Writ of Error *Coram Nobis* in the United States District Court for the Northern District of Illinois, Eastern Division, seeking to vacate his conviction on the grounds that Michael Zavis, Robert Sperling, and John Wilson perjured themselves in Petitioner's second trial. The gravamen of the Petition for Writ of Error *Coram Nobis* is that the conviction is entitled to judicial re-examination because it had caused Petitioner to be debarred from obtaining federal contracts by the federal Defense Logistics Agency. Petitioner's debarment expired on August 11, 1995.

On October 14, 1995, Petitioner filed an amended Petition for Writ of Error *Coram Nobis* in the United States

District Court for the Northern District of Illinois, Eastern Division, based on the decision by the City of Chicago's Purchasing Department to decertify Petitioner's Corporation as a Minority Business Enterprise. In the amended pleading, Petitioner argued that the decertification constituted a civil disability sufficient to warrant relief in the nature of *coram nobis*, namely, that the profitability of his Corporation has significantly decreased in the years since the decertification. Furthermore, the amended complaint also alleged that without MBE Program certification, the Corporation cannot compete effectively with other businesses for moving or hauling contracts. Finally, Petitioner argued that the granting of *coram nobis* relief and the removal of his conviction would remove this civil disability because it would remove the bar to MBE Program certification, thus allowing him (via the Corporation) to compete for public service contracts.

The United States District Court for the Northern District of Illinois, Eastern Division, denied the petition, in a **Memorandum Opinion and Order** dated December 14, 1995. Petitioner then sought review in a timely fashion, by the United States Court of Appeals for the Seventh Circuit. During the pendency of the appeal, Petitioner was recertified by the City of Chicago in relation to the MBE Program. Petitioner voluntarily dismissed Sections One and Two of the appeal, dealing with MBE Program certification. Petitioner did not voluntarily dismiss Section Three, which urged the Seventh Circuit to adopt the view of the United States Court of Appeals for the Fourth and Ninth Circuits that adverse collateral consequences flowing from a conviction are sufficient to warrant *coram nobis* relief. On October 22, 1996, the

United States Court of Appeals for the Seventh Circuit dismissed the remaining count, Section Three of the appeal, holding *coram nobis* relief was moot. Petitioner then filed a Petition for Rehearing En Banc. In this Petition, the Petitioner argued that Section Three of the appeal was not moot, since an adoption by the Seventh Circuit of the Fourth and Ninth Circuits less restrictive view regarding the degree of civil disability required before *coram nobis* relief is warranted would result in a reversal of the district court's order denying the Petitioner's amended Petition. On February 18, 1997, the United States Court of Appeals for the Seventh Circuit denied the Petition for Rehearing En Banc. This Petition for *Writ of Certiorari* follows.

REASONS FOR GRANTING THE WRIT

THE HOLDING OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH AND NINTH CIRCUITS THAT ADVERSE COLLATERAL CONSEQUENCES FLOW FROM ANY CONVICTION AND THAT SUCH CONSEQUENCES ARE A SUFFICIENT CIVIL DISABILITY TO WARRANT GRANTING *CORAM NOBIS* RELIEF

The United States Courts of Appeals for the Fourth and Ninth Circuits have recognized that collateral consequences flow from any felony conviction. *Hirabayashi v. United States*, 828 F.2d 591 (9th Cir. 1987); *United States v. Walgren*, 885 F.2d 1417 (9th Cir. 1989); *United States v. Mandel*, 862 F.2d 1067 (4th Cir. 1988), *cert. denied*, 491 U.S. 906, 109 S.Ct. 3190 (1989). The Ninth Circuit found such consequences flow because a "[c]onviction of a felony

imposes a status upon a person which not only makes him vulnerable to future sanctions through new civil disability status, but which also seriously affects his reputation and economic opportunities." *Mandel*, 862 F.2d 1075 quoting *Parker v. Ellis*, 362 U.S. 574, 593-94, 80 S.Ct. 909, 4 L.Ed.2d 963 (1960) (Warren, C.J., dissenting). Therefore, in *Hirabayashi*, the Ninth Circuit held that "*coram nobis* is available to prevent manifest injustice 'even where the removal of a prior conviction will have little present effect on the petitioner.' " *Hirabayashi*, 828 F.2d at 605. *See also Walgren*, 885 F.2d at 1417; *Mandel*, 862 F.2d at 1067. Thus, by its holding in *Hirabayashi*, the Ninth Circuit adopted a "lenient standard" by which to judge *coram nobis* against.

In support of its holding, the United States Court of Appeals for the Ninth Circuit, in *Hirabayashi*, relied upon the United States Supreme Court opinion handed down in *Sibron v. New York*, 392 U.S. 40, 20 L.Ed.2d 917, 88 S.Ct. 1889 (1968). In *Sibron*, the Court determined that jurisdiction was retained to hear Sibron's direct appeal, even though the criminal sentence had been completed. In so holding, the Court stated, "a criminal case is moot **only** if it is shown that there is no possibility that any collateral consequences will be imposed on the basis of the challenged conviction." (emphasis added) *Sibron*, 392 U.S. at 57.

The United States Court of Appeals for the Seventh Circuit roundly rejected the Fourth and Ninth Circuit's view that adverse collateral consequences flow from a conviction – on its face – and constitute a civil disability warranting *coram nobis* relief. *United States v. Bush*, 888 F.2d 1145 (7th Cir. 1989), *United States v. Craig*, 907 F.2d

653 (7th Cir. 1990), *cert. denied*, 500 U.S. 17 (1990). Furthermore, the Seventh Circuit criticized the Ninth Circuit's application of *Sibron*. In so rejecting the application of *Sibron* by their brethren in the Ninth Circuit, the Seventh Circuit found the case to be inapposite in a *coram nobis* analysis for lack of any systemic concerns regarding finality in a direct appeal situation (such as existed in *Sibron*), as opposed to the presence of such concerns in a *coram nobis* situation. *Craig*, 907 F.2d at 659 (FN 3). The focus of the United States Court of Appeals for the Seventh Circuit remains firmly fixed upon the **systemic** concerns surrounding *coram nobis*, namely, that an increased docket cannot be had at the cost of redressing previous judicial errors. Therefore, by its holding in *Craig*, the Seventh Circuit has unequivocally rejected the standard adopted by the Ninth Circuit, instead adhering to its more arduous standard.

In *Bush*, the Petitioner filed a Petition for Writ of Error *Coram Nobis*, claiming that the stigma associated with his conviction, which adversely impacted his ability to obtain "high-visibility" public relations work, constituted a civil disability. *Bush*, 888 F.2d 1145. The Seventh Circuit rejected the argument that the situation presented a sufficient disability, stating, "we do not belittle Bush's loss . . . [and that] . . . he may suffer greatly, spiritually and monetarily", but this loss does not warrant *coram nobis* relief. *Id.* at 1150. In reaching this conclusion, the Seventh Circuit reasoned that the judicial system lacked adequate resources to handle its current case load, let alone to begin redressing past injustices. To wit, the Seventh Circuit stated:

> any system of justice requires a compromise between finality and accuracy. Although in the best of all worlds every judgment would be subject to correction as new facts came into light and legal principles refined, in a costly legal system correction is a luxury. Judicial time devoted to reexamining decisions of 1975 subtracts from the time available to deal with festering grievances of 1989. *Id.*

In *Craig*, the rationale set forth in *Bush* for denying *coram nobis* relief was affirmed. *Craig*, 907 F.2d at 658 (holding that our legal system must tolerate the chance of error in order to function). The *Craig* court then went on to state not only that it was rejecting the Fourth and Ninth Circuit's holding on the standard to be applied to *coram nobis* relief, but further that "we will continue to adhere to our own precedents [*Bush*] until the Supreme Court changes the law or cogent argument convinces us otherwise." *Id.* at 659.

The most cogent argument for adopting the Fourth and Ninth Circuit Courts of Appeal standard lies in an empirical analysis of the filings of Petition for Writ of Error *Coram Nobis*. In the years since the decision handed down in *Hirabayashi*, a total of 25 Petitions for Writ of Error *Coram Nobis* have been filed in the United States Court of Appeals for the Ninth Circuit. In the eight years since the decision in *Mandel*, a total of nine Petitions for Writ of Error *Coram Nobis* have been filed in the United States Court of Appeals for the Fourth Circuit.

By way of comparison, the United States Court of Appeals for the Seventh Circuit, with its more stringent standard in granting *coram nobis* relief, has experienced

31 Petitions for Writ of Error *Coram Nobis* within the same relevant time frame. Therefore, the Seventh Circuit, focusing on its economy of judicial resources, has seen **more** petitioners seeking *coram nobis* relief, even though the Seventh Circuit has an ostensibly more difficult standard for petitioners to meet. In short, judicial economy is not being served.

The instant matter has now pitted the United States Court of Appeals for the Fourth and Ninth Circuits directly opposite the United States Court of Appeals for the Seventh Circuit. *Hirabayashi* and its progeny in the Ninth Circuit, with the standard for *coram nobis* relief laid down therein, remain diametrically opposed to the Seventh Circuit's holding in *Bush*. In essence, not only does the question as to what standard shall be applied to the Petition for Writ of Error *Coram Nobis* remain unanswered, but the Courts of Appeal cannot even agree on the appropriate analysis to engage.

This Court should grant certiorari not only to end the confusion stemming from the irreconcilable opinions emanating from the Seventh and Ninth Circuit Courts of Appeal, but also to set forth a decisive finding on the appropriate standard for *coram nobis* relief.

CONCLUSION

For all of the above reasons, this Court should grant the petition of Howard C. Medley in this matter and review the erroneous decision of the United States Court of Appeals for the Seventh Circuit.

Respectfully submitted,

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Dated: May 9, 1997

APPENDIX
1

UNITED STATES COURT OF APPEALS

For the Seventh Circuit

Chicago, Illinois 60604

February 18, 1997

Before

Hon. Richard A. Posner, Chief Judge

Hon. Harlington Wood, Jr., Circuit Judge

Hon. Richard D. Cudahy, Circuit Judge

UNITED STATES OF AMERICA, *Plaintiff-Appellee,*	}	Appeal from the United States District Court for the Northern District of Illinois, Eastern Division. No. 88 CR 297 Charles P. Kocoras, *Judge.*
No. 96-1228 v.	}	
HOWARD C. MEDLEY, *Defendant-Appellant.*	}	

ORDER

On December 5, 1996, defendant-appellant filed a petition for rehearing with suggestion for rehearing en banc. All the judges on the original panel have voted to deny the petition and none of the active judges has requested a vote on the suggestion for rehearing en banc. The petition for rehearing is therefore DENIED.

APPENDIX
2

United States Court of Appeals
for the Seventh Circuit

Submitted: September 27, 1996
Decided: October 22, 1996

Before

Hon. RICHARD A. POSNER, ***Chief Judge***

Hon. HARLINGTON WOOD, JR., ***Circuit Judge***

Hon. RICHARD D. CUDAHY, ***Circuit Judge***

UNITED STATES OF AMERICA, *Plaintiff-Appellee,*	[Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 96-1228 v.	[No. 88 CR 297
HOWARD C. MEDLEY, *Defendant-Appellant.*	[Charles P. Kocoras, *Judge.*

ORDER

In 1989 Howard Medley was convicted of violating 18 U.S.C. § 666. He appealed to this court and the conviction was affirmed. *United States v. Medley,* 913 F.2d 1248 (7th Cir. 1990). After being paroled in 1990 Medley filed a 28 U.S.C. § 2255 motion alleging ineffective assistance of trial counsel. The motion was denied and the denial affirmed on appeal. 1 F.3d 1244 (7th Cir. 1992) (unpublished order). In October 1995 Medley filed an amended writ of error coram nobis in the district court based on the City of Chicago's MBE (Minority Business Enterprise) decertification of his firm, claiming that the

decertification constituted a civil disability justifying relief. On appeal, challenging the district court's denial of relief, Medley filed a brief raising three issues. The first two issues seek relief premised on the MBE decertification being a civil disability; the third, to reconsider our precedents. The court set this appeal for oral argument on October 22, 1996.

The City of Chicago, on August 1, 1996, recertified appellant's business as an MBE firm. The conviction is, therefore, no longer a civil disability in this regard. Appellant now moves to voluntarily dismiss his appeal as to § I and § II of his brief as moot. The motion is granted. The only issue remaining before us is § III, urging us to adopt the Ninth and Fourth Circuit's less restrictive view that adverse collateral consequences which flow from a conviction are a sufficient civil disability to warrant *coram nobis* relief. However, the restoration of MBE status has rendered this entire appeal moot. The appellant now seeks only reconsideration of our precedents, not substantive relief. As the appellant has withdrawn his first two issues and no longer seeks any monetary or other relief,

IT IS ORDERED that oral argument, set for October 22, 1996, is VACATED and the appeal is DISMISSED as MOOT.

APPENDIX 3

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	
Plaintiff,	)	
v.	)	**88 CR 297-3**
HOWARD MEDLEY,	)	
Defendant.	)	

MEMORANDUM OPINION

CHARLES P. KOCORAS, District Judge:

This matter is before the Court on Defendant's Amended Petition for Writ of Error Coram Nobis pursuant to 29 U.S.C.A. § 1651(a). For the reasons set forth below, this petition is denied.

BACKGROUND

In 1989, Petitioner Howard Medley, a former Chicago Transit Authority ("CTA") board member, was convicted of violating 18 U.S.C. § 666. The conviction was based upon Medley's knowing acceptance of $25,000 from Brian Flisk and Metropolitan Petroleum in return for assistance that he provided to them in deflecting a CTA investigation into fraud stemming from a contract between Flisk and the CTA. Medley was sentenced to 30 months incarceration and a $10,000 fine. This conviction was affirmed

by the Seventh Circuit. *United States v. Medley*, 913 F.2d 1248 (7th Cir. 1990).

Medley was paroled on December 5, 1990. On February 12, 1992, Medley filed a habeas petition pursuant to § 2255, alleging numerous instances of ineffective assistance of trial counsel. This petition was denied by this Court, and this denial was subsequently affirmed by the Seventh Circuit in an unpublished opinion which incorporated this Court's opinion in toto. *United States v. Medley*, 1 F.3d 1244 (7th Cir. 1992), *cert. denied*, 114 S.St. (sic) 604 (1993). On September 20, 1992, Medley's post-incarceration probationary period ended and Medley ceased to be under any form of criminal justice sentence.

Three years later, on August 10, 1995, Petitioner filed a writ of error coram nobis seeking to vacate his conviction because of the government's use of perjured testimony. In this petition, Medley claimed that his conviction was entitled to judicial re-examination because it had caused him to be "debarred" from obtaining federal contracts by the federal Defense Logistics Agency on September 29, 1991. However, in his petition, Medley noted that his disbarment ended the next day, August 11, 1995. After this time, his conviction would no longer impeded [sic] him from seeking these federal contracts.

After the government noted that the petition appeared to be moot at a status hearing on August 22, 1995, Medley filed an amended petition for writ of error coram nobis. In the new petition, Medley abandons his original claim and argues that he is suffering from a different civil disability. He now claims that he suffers as

a result of an April, 1990, decision by the City of Chicago's Purchasing Department to decertify Medley's moving company, Medley Movers and Storage, Inc., as a Minority Business Enterprise ("MBE") in bidding for City contracts. The profitability of Medley Movers has decreased in the years since the company was decertified. Medley contends that without MBE certification he cannot compete effectively with other businesses for moving contracts.

DISCUSSION

At present, our investigation of this matter is limited to the threshold question of whether Medley is suffering from a civil disability. The writ of error coram nobis is reserved for compelling circumstances because frequent use would discard the benefit of the finality of judgments. *United States v. Keane*, 852 F.2d 199, 202 (7th Cir. 1988), *cert. denied* 490 U.S. 1084 (1989). A writ of error coram nobis generally provides the same relief as a writ of habeas corpus. *Howard v. United States*, 962 F.2d 651, 653 (7th Cir. 1992), citing *United States v. Bonansinga*, 855 F.2d 476, 478 (7th Cir. 1988). However, while the defendant must be under custody in the habeas context, a writ of error coram nobis is available to a defendant even after he has been released from custody. *Id.* As a substitute for the custody requirement, the petitioner for a writ of error coram nobis must show that there is an ongoing risk that an erroneous conviction's lingering disabilities will cause his [sic] serious harm. *United States v. Bush*, 888 F.2d 1145, 1148, 1150-51 (7th Cir. 1989); *United States v. Craig*, 907 F.2d 653, 658 (7th Cir. 1990), *cert. denied* 500 U.S. 917. The Seventh Circuit has identified three requirements of this

lingering civil disability: "First, the disability must be causing a present harm; it is not enough to raise purely speculative harms or harms that occurred completely in the past. Second, the disability must arise out of the erroneous conviction. Third, the potential harm to the petitioner must be more than incidental." *Craig*, 907 F.2d at 658.

As mentioned above, in order to obtain coram nobis relief, a petitioner must suffer from a substantial disability. *Howard v. United States*, 962 F.2d at 653. The Seventh Circuit has explored the definition of such a disability in holding that the loss of the right to hold an occupational license could support coram nobis relief. *Craig*, 907 F.2d at 659 (in which the Court nevertheless held that Petitioner had not proven that his conviction was the direct cause of his disbarment); *Keane*, 852 F.2d at 203 (the Court, however, denied the writ in this case because Keane was readmitted to the Illinois Bar.) However, while the complete bar from an occupation may justify relief, the choice of a job within a profession does not. *United States v. Gottlieb*, 738 F.Supp. 1174, 1180 (N.D. Ill 1990), citing *Bush*, 888 F.2d at 1150. In sum, to "endure a restricted occupational menu is not to suffer a civil disability." *Id.*

We do not believe that the MBE decertification is sufficient to qualify as a civil disability. As both parties admit, Petitioner can still operate as a moving company without certification. Nevertheless, Medley claims that he is disabled by his ability to excel in this profession because of the decertification. As the Seventh Circuit pointed out in *Bush*, "Difficulty in obtaining a desirable job is not a legal disability." *Bush*, 888 F.2d at 1149. Like

the petitioner in *Bush*, we believe that Medley is simply experiencing difficulty obtaining the plum contracts that he wishes to obtain. However, Medley has not been barred from the profession altogether and he and his company can still apply for and obtain city contracts. As established above, the Seventh Circuit requires a petitioner to suffer from a more substantial injury than enduring the "restricted occupational menu" like the one that Medley alleges. *See, Bush,* 888 F.2d at 1150.

Even assuming, arguendo, that MBE decertification could be substantial enough to be considered a lingering civil disability, Petitioner's claims fail for independent reasons. First, we are not convinced by Petitioner's argument that he is permanently barred from MBE certification because of his conviction. Petitioner can reapply for certification and may very well be chosen. His conviction is only one of the factors considered in making the determination; it does not act as an absolute bar to certification. Second, we cannot speculate as to whether the reversal of Medley's conviction would enable him to once again qualify for MBE certification. *See, e.g., Howard,* 962 F.2d at 654-55 (the Court could not speculate on Petitioner's chances of being readmitted to the bar); *Gottlieb,* 738 F.Supp. 1179-81 (the Court would not speculate on the effect of reversal on petitioner's application for a lottery license). It is totally unclear whether Medley Movers would be certified once again if Petitioner's conviction was reversed. As such, we cannot conclude that Medley suffers from a lingering civil disability.

CONCLUSION

For all of the above reasons, we do not believe that Medley is suffering from a civil disability. Therefore, Medley's Amended Petition for Writ of Error Coram Nobis is denied.

/s/ _____
Charles P. Kocoras
United States District Judge

Dated: December 14, 1995